

# United States Court of Appeals

FOR THE NINTH CIRCUIT

BRENT L. SELICK,

Appellant,

vs.

THEODORE WILLIAM BELL, SR. ,  
and MYRTLE WATSON HARRIS BELL,

Appellees.

On Appeal From the United States District Court  
For the Southern District of California

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## BRIEF OF APPELLEES

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## SUBJECT INDEX

	Page
STATEMENT. . . . .	1
STATEMENT OF THE CASE . . . . .	1
ARGUMENT . . . . .	2
1. The contract for the sale of a vessel is not a maritime contract. . . . .	2
CONCLUSION . . . . .	3
CERTIFICATION . . . . .	3

## TABLE OF AUTHORITIES CITED

### CASES

Foust vs. Munson Steamship Lines, 299 U. S. 77 (1936). . . . .	2
Grand Banks Fishing Company, Inc. vs. Styron, 114 5th, Supp. 1, 1953, A. M. C. 2172 (D. Me. 1953) . . . .	2
On the Ada, 2 Circuit 1918, 250f 194 . . . . .	2

### STATUTES

Bankruptcy Act, Sections 24 and 25. . . . .	1
Section 67a-1. . . . .	2, 3
28 U. S. C. 1291 . . . . .	1



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STATEMENT

Jurisdiction in this cause rests upon Sections 24 and 25 of the Bankruptcy

Act, 28 U. S. C. 1291.

STATEMENT OF THE CASE

Appellant filed an action in the Superior Court, County of San Mateo, State of California, and obtained an inpersonam judgment upon a suit alleging failure of the buyer to perform a conditional sales contract for the purchase of a vessel. Within four months of the filing of the voluntary petition in bankruptcy by THEODORE WILLIAM BELL, SR., and MYRTLE WATSON HARRIS BELL, appellant filed an abstract of judgment with the County Recorder of San Diego County. An action was

brought before the Referee pursuant to 67a-1 of the Bankruptcy Act and the Referee declared the appellant's judgment lien to be void. The District Court affirmed the Referee and this appeal is taken from said order of affirmation.

### ARGUMENT

1. The contract for the sale of a vessel is not a maritime contract. Grand Banks Fishing Company, Inc. vs. Styron, 114 5th, Supp. 1, 1953, A. M. 2172 (D. Me. 1953). In the Grand Banks Fishing Company, Inc., case the libellant was a purchaser of a vessel on a sales contract who sued for breach of warranty after discovering through a survey certain defects in the purchased vessel. The Court quoted the Circuit Court In the Ada, 2 Circuit 1918, 250f 194 at page 197 and 199 wherein that Court said:

"The rule is settled that contracts for---selling a ship are not maritime contracts within the jurisdiction of admiralty".

The lien in question being a lien upon real property can hardly be considered a maritime lien. A process flowing from an inpersonam judgment, even though said judgment be rendered through a court in admiralty, may be voided by the Bankruptcy Court. Foust vs. Munson Steamship Lines, 299 U. S. 77 (1936).

Answering subdivision D, page 9 of Appellant's brief, it is respectfully submitted that he is treating with the state laws relative to setting aside judgments usually default judgments. Section 67a-1 of the Bankruptcy Act does not purport to nullify judgments but only certain types of liens proceeding from judgments. It in no way conflicts with the state laws of California.



CONCLUSION

It is respectfully submitted that because the judgment in question proceeded from a cause of action not within admiralty jurisdiction, and was an in personam judgment which by recording, created a lien on real property the Referee in Bankruptcy acted properly and within his jurisdiction in voiding said lien pursuant to the terms of 67a-1 of the Bankruptcy Act.

Dated: August 29, 1967

Respectfully submitted,

SMITH, BIGGINS & CROCKETT

By: /s/ JAMES J. BIGGINS, JR.

Attorneys for Appellees

CERTIFICATION

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is fully in compliance with said Rules.

/s/ JAMES J. BIGGINS, JR.

